

REQUEST FOR APPROVAL

To: Howard Levenson
Deputy Director, Materials Management and Local Assistance

From: Cara Morgan
Branch Chief, Local Assistance and Market Development

Request Date: October 20, 2015

Decision Subject: State Agency and Large State Facility AB 75 Diversion Program
Compliance -- 2013/2014 Biennial Report Review Findings

Action By: November 17, 2015

Summary of Request:

Pursuant to requirements that State agencies and large State facilities divert at least 50 percent of their solid waste, staff is submitting the biennial report review findings for 2013/2014 for the 226 reporting State agencies and large State facilities. Staff reviewed the waste diversion activities reported by each State agency and large State facility and found that the all of the State agencies and large State facilities are implementing their diversion programs and are meeting, or have made a good faith effort to meet, the statutory diversion requirements. As a part of this review, 71 of the State agencies are being recommended for a finding of non-compliance due to gaps in their procurement of recycled-content products. One facility is also still under review. One non-compliant agency, 1A District Agricultural Association (DAA), will continue on corrective action from the prior compliance cycle.

Recommendation:

Staff recommends approval of the biennial report review findings for 2013/2014 for the 226 reporting State agencies and large State facilities as listed in attachments 1-4.

Deputy Director Action:

On the basis of the information and analysis in this Request for Action and the findings set out herein, I hereby approve the biennial review findings for the 2013/2014 reports for the 226 State agencies and large State facilities as indicated below:

- Approve the finding that the 99 State agencies and facilities listed in Attachment 1 submitted full reports as required and are adequately implementing solid waste diversion programs and are compliant with statutory diversion requirements.
- Approve the finding that the 44 State agencies and facilities listed in Attachment 2 submitted modified reports as required and are adequately implementing solid waste diversion programs and are compliant with program implementation.
- Approve the finding that the 12 State agencies and facilities listed in Attachment 3 submitted full reports as required, are fully implementing diversion programs and have made a good faith effort to be compliant with statutory diversion requirements.

- Continue to coordinate with the Department of General Services (DGS) on compliance activities for the 71 State agencies and facilities listed in Attachment 4 that were not compliant with their recycled-content purchasing requirements. Two of these agencies submit a separate report for SABRC but not a separate report on waste disposal and diversion.
- Continue with compliance review for one State agency, 1A District Agricultural Association, which is under review by the Jurisdiction and Product Compliance Unit with respect to the 2010 and 2012 reporting cycles.

Dated: _____

 Howard Levenson, Deputy Director
 Materials Management and Local Assistance

Attachments:

1. Attachment 1: Agencies/Facilities Submitting Full Reports Finding of Adequate Program Implementation and Compliance With Statutory Diversion Requirements
 2. Attachment 2: Agencies/Facilities Submitting Modified Reports Finding of Adequate Program Implementation and Compliance with Statutory Requirements
 3. Attachment 3: Agencies/Facilities Submitting Full Reports Finding of Good Faith Effort to Adequately Implement Programs and to Achieve the Diversion Statutory Requirements
- Attachment 4: Agencies/Facilities Non-compliance with Statutory Diversion and/or Program Requirements

Background Information:

The State Agency Integrated Waste Management Act (Assembly Bill 75, Chapter 764, Statutes of 1999) took effect on January 1, 2000. Among other requirements, the Act mandated that State agencies develop and implement an integrated waste management plan. State agencies and large State facilities must divert at least 50 percent of their solid waste from disposal facilities by and after January 1, 2004. In addition, annually by May 1, each State agency and large facility must submit a report to CalRecycle that summarizes progress in implementing solid waste diversion programs.

In 2000, the California Integrated Waste Management Board (CalRecycle's predecessor) approved a policy that provides an alternative reporting structure to those agencies that have fewer than 200 employees and generate less than 100 tons of waste annually. This alternative reporting structure is called a 'modified' annual report and allows State agencies that meet these criteria to submit information only on the types of on-going programs; they do not have to report total disposal. Under the modified annual report structure, qualifying State agencies that have implemented the number and types of effective programs which represent the reasonable and

feasible solid waste diversion opportunities available for that agency will be found in compliance with statutory diversion mandates.

Per policy adopted in 2007 by the California Integrated Waste Management Board, CalRecycle staff annually review the information submitted by all reporting agencies/facilities. Every two years, CalRecycle staff conducts a formal compliance review of selected agency/facility reports for which the submitted data indicate a likelihood of inadequate program implementation and/or non-compliance with statutory diversion mandates. The biennial compliance review is CalRecycle's independent evaluation of each State agency and large State agency's progress in implementing solid waste diversion programs and in meeting the statutory diversion requirement. As a result of this review, CalRecycle may find that: 1) a State agency or large State facility has adequately implemented its diversion programs and has achieved the statutory diversion requirement; 2) a State agency or large State facility has made a good faith effort to implement diversion programs and achieve the statutory diversion requirement; or 3) a State agency or large State facility has failed to adequately implement solid waste diversion programs, and the process of compliance oversight should commence.

The nature of the annual review and biennial formal review changed in 2008 with passage of the Per Capita Disposal Measurement System Act (SB 1016, Chapter 343, Statutes of 2008), which modified the way State agencies measure their progress toward meeting the statutory waste diversion mandate. Under this Act, State agencies are still required to maintain the 50 percent waste diversion requirement as required by the State Agency Integrated Waste Management Act. However, an assessment of solid waste diversion program implementation and per capita disposal, as opposed to an estimate of diversion, are now used as indicators of agency/facility progress toward meeting the mandate.

There are several new and important aspects of this review cycle:

- 1) Mandatory Commercial Recycling -- State agencies are also required to adhere to mandatory commercial recycling requirements pursuant to AB 341 (Chapter 476, Statutes of 2011), which are part of CalRecycle's efforts to achieve the goal of reducing landfill disposal and achieving 75% reduction, recycling, and composting by 2020 (Assembly Bill 341, Chapter 476, Statutes of 2011). Under AB 341, State agencies that generate four cubic yards or more of commercial solid waste per week must arrange for recycling services for that material. CalRecycle verifies implementation during site visits and analysis of annual reports from State agencies.
- 2) Mandatory Commercial Organics Recycling -- In addition, beginning in 2016 State agencies also are subject to Assembly Bill 1826 (Chapter 727, Statutes of 2014), which requires that businesses which generate certain amounts of organic waste per week to similarly arrange for recycling services for that organic material, on or after April 1, 2016. Under the law, State agencies are defined as a business and, therefore, must abide by requirements of the new law. The law requires that State agencies arrange for recycling services for the following types of organic material: food waste; green waste; landscape and pruning waste; nonhazardous wood waste; and food-soiled paper. If State agencies/facilities meet the reporting thresholds in the statute, then they will be required to report on their compliance with these recycling requirements, commencing with their 2016 Annual Report that is submitted in May 2017.

CalRecycle will verify implementation of State agencies and facilities' implementation of organics recycling programs during site visits and analysis of annual reports from State agencies.

- 3) State Agency Buy Recycled Campaign (SABRC) Requirements -- Prior to now, staff has not included SABRC non-compliance in its Request for Approval for the biennial review for compliance with the State Agency Integrated Waste Management Act. However, commencing with this 2013/2014 biennial review cycle, staff is now including a finding for those agencies that were found to not be compliant with SABRC requirements, as noted below (see "Relationship Between State Agency Diversion Reporting and the State Agency Buy Recycled Campaign" below and Attachment 4).

Analysis and Findings:

The following is a summary of the staff's review findings for all reporting State agencies and large State facilities. With the exception of the one non-reporting agency on continued compliance (1A District Agricultural Association) and two new reporting entities for 2014, reports from both 2013 and 2014 years were analyzed, along with prior year reports, for the purpose of determining disposal trends and program implementation history. A total of 225 agencies were required to report (172 with full reports and 53 with modified reports) in 2013 and 2014. In addition, one District Agricultural Association that was not required submitted a modified report. Of these 225 agencies and large State facilities, 224 (171 with full reports and 53 with modified reports) submitted a report. One District Agricultural Association, 1A District Agricultural Association, Cow Palace, was required to submit a full report to fulfill prior non-compliance, but it failed to do so.

Note that the total number of agencies mentioned does not include 125 community colleges or districts that were not required to submit their annual report for the 2013 and 2014 reporting cycles.¹ In addition, this does not include the remaining 49 District Agricultural Associations that were not required to and did not submit a report during the 2014 reporting cycle.²

¹ Community Colleges were not required to submit a calendar year 2012 annual waste report that is inclusive of Fiscal Years 2011/12 and 2012/13 in accordance with the Budget Act and the conditions of Government Code 17581.5 (a)(1) and (2) (as added by AB 114, Chapter 43, Statutes of 2011). This temporary suspension applied to Fiscal Years 2013/14 and affected the submission of the calendar year 2013 annual waste report. This suspension has been extended annually and currently effects any reports that are inclusive of Fiscal Years 2014/2015 and 2015/2016.

² As of January 1, 2015 pursuant to AB 2490 (Chapter 342, Statutes of 2014) Sections 10 and 15, California District Agricultural Associations (DAA) are excluded from the definition of "state agency" for purposes of those provisions (Food and Agricultural Code Section 4061(a) and PRC Section 42926 (d)). As such, DAAs are no longer required to submit an annual state agency waste management report to CalRecycle's State Agency Reporting Center (SARC) by May 1 or a State Agency Buy Recycled Campaign report (SABRC) by March 1 of each year for "Calendar Year" reporters or October 31 for "Fiscal Year" reporters.

- **Agencies/Facilities Submitting Full Reports: Finding of Adequate Program Implementation and Compliance with Statutory Diversion Requirements (Attach. 1):**

Staff found 99 of the 172 State agencies and facilities that submitted full reports to have fully implemented programs and met the diversion mandates. These agencies/facilities submitted reports that provide information on the diversion programs implemented and the total tons of material disposed by the reporting agencies/facilities. Each of these 99 agencies/facilities reported per capita disposal for the 2014 calendar year that was less than the 50% equivalent per capita disposal target established for its agency/facility. Staff review primarily consisted of an analysis of the information submitted in the electronic annual report. Site visits were not conducted in most instances.

- **Agencies/Facilities Submitting Modified Reports: Finding of Adequate Program Implementation and Compliance with Statutory Requirements (Attach. 2):**

Staff found 44 of the 54 State agencies and facilities that submitted modified reports meet the requirements of CalRecycle's alternative reporting structure, and are compliant with statutory diversion mandates. In addition, 35-A DAA, which was not required to report, was reviewed as well. These agencies/facilities submitted reports that provide information on the diversion programs implemented by the reporting agencies/facilities. They do not report disposal totals and do not have a 50% equivalent per capita disposal target for their agency/facility. Staff review primarily consisted of an analysis of the information submitted in the electronic annual report, including an analysis to determine if the agency still meets the modified reporting criteria. Site visits were not conducted in most instances.

- **Agencies/Facilities Submitting Full Reports: Finding of Good Faith Effort to Adequately Implement Programs and be Compliant with Statutory Diversion Requirements (Attach. 3):**

Staff found that of the 172 State agencies and facilities that submitted full reports, 12 reported per capita disposal for the 2014 calendar year that was in excess of the 50 percent equivalent per capita disposal target for the agency/facility and/or reported an increase in disposal over time. However, staff also found that the agencies/facilities were adequately implementing solid waste diversion programs and making reasonable and feasible efforts (i.e., a good faith effort) to be compliant with statutory diversion requirements. The general basis for staff's analysis and finding of a good faith effort for these agencies/facilities is explained below.

Staff review consisted of an analysis of the information submitted in the electronic annual report and one or more site visits to each of these State agencies and large State facilities to assess program implementation and effectiveness. Staff analyses indicate that the agencies exceeded their target for one of the following reasons:

- a. Based on staff's (and their supervisor) site visit at the agency, staff noted concerns with waste diversion programs and an increase in disposal tonnage. After the site

visit and continued correspondence with the agency, staff addressed more specific concerns with recycling programs, hauler performance, and disposal, e.g., disposal related to construction and demolition (C&D) material. Some agencies explained that they had issues due to lacking staff dedicated to the waste management program; e.g., one agency reported that they now have their first Sustainability Program Manager that has updated the University's Sustainability Plan 2013-2023 which is designed to address concerns with recycling programs and hauler performance. Other agencies reported that the disposal was impacted by food waste and that they are addressing this by implementing new programs in anticipation of AB 1826 requirements. Staff also addressed concerns with disposal, especially as related to C&D. For example, one agency indicated it has a new waste hauler (as of July 2015) that processes all waste placed in bins and C&D debris at a new processing facility that achieves a high recovery rate. During the site visit, staff viewed the agency's C&D recycling at the construction site.

- b. With improvements in managing and tracking solid waste and recyclables, some agencies/facilities were able to identify gaps in programs and make adjustments in targeted areas with the implementation of signage, education and training, strategic placement of bins, etc. Also, they implemented increased communication between the Recycling Coordinator and staff by submitting newly tracked data more frequently, understanding the haulers' process for diverting organics, downsizing waste bins appropriately, monitoring the collection and flow of food waste, ensuring that hired contractors are recycling properly, and continuing to improve education and outreach.
 - c. Upon the completion of site visits, staff found that some agencies in general have the proper programs in place for most of their materials. However, an unexpected increase in material and the inability or lack of knowledge on how to recycle the material immediately, did lead to some agencies disposing of material, e.g., textiles. To address these gaps, agencies have been matched up with an appropriate recycling vendor.
 - d. Some agencies needed technical assistance that is now underway to help them implement programs that could provide improvement and efficiency for diversion and recycling at agencies with multiple facilities and streamline the process at those agencies. More long term and larger plans, include coordination with the State agency and its local jurisdiction, to implement or heighten organics programs, in particular food waste.
- **Agencies/Facilities Submitting Full Reports: Finding of Inadequate Program Implementation and Non-compliance with Statutory Diversion Requirements (Attach. 4):**

One State agency, 1A District Agricultural Association, is already under the review of the Jurisdiction and Product Compliance Unit from the 2010 and 2012 compliance review

reporting cycles. A 2014 report to determine status of compliance with requirements was not submitted during this reporting cycle. One facility, the California Institute for Women, is still under review to determine compliance.

Relationship between State Agency Diversion Reporting and the State Agency Buy Recycled Campaign:

In addition to managing and diverting waste, the State Agency Integrated Waste Management Act (Assembly Bill 75) also mandated that State agencies should procure products with recycled content in accordance with existing programs and measures. This requirement is directly related to the obligations State agencies have regarding recycled-content procurement pursuant to the State Agency Buy Recycled Campaign (SABRC) (Public Contract Code Sections 12200-12217). State agency procurement of recycled-content products helps expand markets for these products, which in turn helps in the State's efforts to meet the 75% reduction, recycling, and composting goal by 2020.

In particular, State agencies are mandated to purchase products that contain a specified minimum postconsumer recycled content and submit an annual report to CalRecycle on dollars spent on products purchased in eleven product categories³. CalRecycle monitors and analyzes State agency procurement of recycled content products through review of these annual reports.

Following submission and analysis of the 2014 annual reports, CalRecycle referred 71 agencies that did not fully comply with the minimum requirements to the DGS. Currently, CalRecycle utilizes DGS' annual delegated purchasing authority renewal process as a tool to address non-compliant agencies. Over one-half of State agencies have what is known as delegated and/or statutory authority to purchase products, outside of DGS's own statewide contracts. Agencies with this authority may purchase goods and services independently, including through service contracts where the agencies may not report these expenditures separately from the services rendered and where the contracts may not include SABRC purchasing and reporting requirements for the contractors and subcontractors. To address this, CalRecycle and DGS staff established a process that includes CalRecycle identifying agencies not meeting their SABRC requirements, reporting that information to DGS, and working with DGS to target additional outreach, assistance, and training to those agencies. As a result of referring the 71 non-compliant agencies in this review cycle to DGS, CalRecycle and DGS are discussing further aspects of the process, for example with respect to notifying non-compliant agencies and then having those agencies inform CalRecycle about how deficiencies will be addressed. This process will be important in getting agencies to rectify their SABRC deficiencies and comply with the SABRC requirements.

³ <http://www.calrecycle.ca.gov/BuyRecycled/StateAgency/Manual/Tools/ProdCategory.pdf>